

SCHOONER AMISTAD.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Sundry letters between the Department of State and the Chevalier d'Argaiz, on the subject of the schooner "Amistad."

FEBRUARY 28, 1842.

Referred to the Committee on Foreign Affairs.

To the House of Representatives :

I transmit to Congress sundry letters which have passed between the Department of State and the Chevalier d'Argaiz, envoy extraordinary and minister plenipotentiary of Spain near the Government of the United States, on the subject of the schooner "Amistad," since the last communication of papers connected with that case. This correspondence will show the general grounds on which the Spanish minister expresses dissatisfaction with the decision of the Supreme Court in that case, and the answers which have been made to his complaints by the Department of State.

In laying these papers before Congress, I think it proper to observe that the allowance of salvage, on the cargo, does not appear to have been a subject of discussion in the Supreme Court. Salvage had been denied in the court below, and from that part of the decree no appeal had been claimed.

The 9th article of the treaty between the United States and Spain provides that "all ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either State, and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof." The case of the "Amistad," as was decided by the court, was not a case of piracy, and therefore not within the terms of the treaty. Yet it was a case, in which the authority of the master, officers, and crew, of the vessel, had been divested by force, and in that condition the vessel, having been found on

the coast, was brought into a port of the United States; and it may deserve consideration that the salvors in this case were the officers and seamen of a public ship.

It is left to Congress to consider, under these circumstances, whether, although in strictness salvage may have been lawfully due, it might not yet be wise to make provision to refund it, as a proof of the entire good faith of the Government, and of its disposition to fulfil all its treaty stipulations, to their full extent, under a fair and liberal construction.

JOHN TYLER.

WASHINGTON, February 27, 1843.

List of accompanying papers.

Chevalier d'Argaiz to Mr. Webster, 5th April, 1841.

Chevalier d'Argaiz to Mr. Webster, 11th April, 1841.

Mr. F. Webster to Chevalier d'Argaiz, 3d May, 1841.

Chevalier d'Argaiz to Mr. Webster, 29th May, 1841.

Mr. Webster to Chevalier d'Argaiz, 1st September, 1841.

Chevalier d'Argaiz to Mr. Webster, 24th September, 1841.

Mr. Webster to Chevalier d'Argaiz, 21st June, 1841.

[Translation of a note from the Chevalier d'Argaiz, envoy of Spain.]

WASHINGTON, April 5, 1841.

The Chevalier d'Argaiz had the honor to receive, with the Secretary of State's note of the 3d instant, copies of two letters received at his Department relative to the slave Antonio. They contain some inaccuracies, which will not, however, be indicated, as they are of no importance.

The late Secretary of State, on learning the decision of the district court of Connecticut, informed the Chevalier d'Argaiz that the slave Antonio was at his disposal, and the Chevalier d'Argaiz, in consequence, determined to bring him to his own house, until there should be a proper opportunity to send him to Havana; and, when about to carry this determination into effect, Mr. Forsyth informed him that the district attorney of Connecticut had declared that it would be necessary for the slave Antonio to remain in that State until the cause should be brought by appeal before the circuit court, on account of the great value of his evidence. To this the Chevalier d'Argaiz assented, and since that time he has heard nothing of the said negro.

Circumstances have, however, been entirely altered, by the decision of the Supreme Court; and, according to the information received by the Chevalier d'Argaiz, it is very probable that the negro will not reach Havana, if he should take upon himself the charge of sending him there. For which reason, he conceives that the Government of the United States will be better able to ensure his arrival at that island, where the consul of the Union may deliver him to his master.

The Chevalier d'Argaiz avails himself of this occasion to repeat to the Secretary of State the assurances of his high consideration.

HON. DANIEL WEBSTER,

Secretary of State.

[Translation of a note from the Spanish envoy, &c.]

WASHINGTON, April 11, 1841.

SIR: Her Majesty's vice consul at Boston writes to me, under date of the 7th instant, as follows:

"I have just received from the marshal of Connecticut a letter, of which this is a literal translation." Since my last letter to you, respecting the case of the negro Antonio, my conjectures have been realized, though in a different manner. At that time I supposed and feared that the self-styled friends of the Africans would solicit a writ of *habeas corpus* for his liberation; but they adopted another method. The jailor allowed the boy to go about the house and assist in the labors of the kitchen and in waiting at table. The said friends availed themselves of every opportunity to preach to him about liberty, and at length induced him to go away; they placed him on board the steamboat on Monday morning last, and he went to New York. I followed him to that city, where Lewis Tappan, the leader of the abolitionists, informed me that Antonio was in town, but that he would not be delivered to me, and that arrangements had been made for sending him elsewhere. I could not meet him myself. I regret this occurrence very much, and fear that he is beyond our reach. If, however, I should succeed in finding him anywhere, you shall receive immediate notice."

By the letters from Mr. Baldwin, of the 21st of March last, and from Mr. Andrew Judson, of the 26th of the same, which you were pleased to send me with your note of April 3d, it appeared that the negro Antonio persisted in desiring to return to Havana; from which it may be inferred that, in order to make him change that determination, seduction or deception must have been employed, perhaps by persons whom his declarations might have affected (*comprometer*;) and I do not understand why the marshal of Connecticut, whom Lewis Tappan informed that the said negro was in the city, did not take any measures to engage the authorities of that place, either with the view to recover him or to have him placed on board a vessel for Havana.

In virtue of what is here stated, I have considered it my duty to make this communication to you, sir, having no doubt that you would take the necessary measures to have the slave Antonio restored to his owner.

I repeat to you, sir, the assurances of my distinguished consideration.

P. A. D'ARGAIZ.

HON. DANIEL WEBSTER,
Secretary of State.

DEPARTMENT OF STATE,

Washington, May 3, 1841.

SIR: In the absence of the Secretary of State, I have the honor of replying to your note of the 12th of April last, relating to the negro Antonio. I have laid it before the President, and am directed by him to say, that he regrets very much the occurrence of any event that seems at all likely to defer or delay the final and satisfactory settlement of the affair of the "Amistad."

Inquiry will be immediately directed to be made by the proper officers in order to discover the slave Antonio; and I shall have much pleasure

in communicating to you the earliest information received at the Department of the success of such investigation.

I avail myself of this occasion to offer you the assurances of my very high consideration.

FLETCHER WEBSTER,
Acting Secretary of State.

Chevalier D'ARGAIZ, &c.

[Translation of a note from the Chevalier d'Argaiz.]

WASHINGTON, May 29, 1841.

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, has the honor, in compliance with what was agreed on with the Secretary of State in their last conference, to make known to him the conviction of the undersigned that the 6th article, as also the 8th, 9th, and 10th, of the treaty of 1795, have not been properly carried into execution, (or effect,) in the affair of the schooner "Amistad," as he conceives that he has proved in his correspondence. The subjects of Her Catholic Majesty have not received the assistance expressed in those articles, nor have their properties been respected, as is stipulated in the said articles; and this must have been understood by the Attorney General, Mr. Grundy, as appears by the opinion which he gave in November, 1839.

The Government of the Union gave to this affair a course, forced, illegal, and contrary to the intention of the contracting parties.

The undersigned protested against it in due time, making the Government of the United States responsible for the consequences. Aware, however, of the embarrassed situation of the actual administration, and that a change of circumstances has rendered it impossible now to effect the fulfilment of that treaty, the undersigned believes he ought to demand, as he now does—

1. Indemnification for the vessel called the "Amistad,"
2. Indemnification for her cargo, including the negroes found on board.
3. Indemnification for the losses and injuries suffered by (or inflicted on) the Spanish subjects, Don Pedro Montes and Don José Ruiz, during their unjust imprisonment.
4. The assurance that the course given to this affair shall never serve as a precedent in analogous cases which may occur.

The undersigned avails himself of this occasion to repeat to the Secretary of State the assurances of his high consideration.

P. A. D'ARGAIZ.

Hon. DANIEL WEBSTER.

DEPARTMENT OF STATE,
Washington, September 1, 1841.

The undersigned has the honor to acknowledge the receipt of the note of M. d'Argaiz, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, of the 29th of May, in which he makes known to the undersigned his conviction that the sixth, eighth, ninth, and tenth articles of the treaty of 1795, between the two countries, have not properly been carried into execution, in the affair of the "Amistad," as he

conceives he has proved in his correspondence, and demands: 1st, indemnification for the vessel called the "Amistad;" 2d, indemnification for the cargo, including the negroes found on board; 3d, indemnification for the losses and injuries suffered by (or inflicted on) the Spanish subjects, Don Pedro Montes and Don José Ruiz, during their unjust imprisonment; and, 4th, the assurance that the course given to this affair shall never serve as a precedent for any analogous cases that may occur.

This note has been laid before the President, and the undersigned has been by him instructed to reply as follows:

The President had supposed that, after the decision of the Supreme Court of the United States upon this question, there would have been no occasion to renew a correspondence upon it between the two Governments, and that M. d'Argaiz was aware that the President had no power to review or alter any of the judgments of that court, it being a tribunal wholly independent of the Executive, and one whose decisions must be regarded as final and conclusive upon all questions brought before it. He had hoped, too, that its decree would have proved satisfactory to M. d'Argaiz and the Government of Spain, and that the facts proved, and the arguments offered before it, together with the able opinions delivered by its members in rendering the decree, would have prevented all disagreement or dissatisfaction with the result to which they arrived. The court was guided, in its deliberations, as well by the treaty between the two countries as by the law of nations and of the United States; and it is not for the Executive to question that its decree was in exact conformity with the obligations imposed upon it by that treaty and those laws.

No branch of the Government of the United States, whether Legislative, Executive or Judiciary, can have been influenced by any other motives than those of a sincere desire to perform all the duties, and fulfil all the requirements, exacted of either by the terms of the treaty between this Government and Spain, with respect to her national character and sovereignty, and a view of preserving and strengthening the friendly relations which have so long and so happily subsisted between them; and the undersigned hopes that M. d'Argaiz himself will eventually join in approbation of the course adopted—convinced, as he must be, of the friendly disposition of all branches of this Government towards his own.

The articles to which M. d'Argaiz refers, as containing stipulations which have not been carried into effect in the case of the "Amistad," relate to the defence and protection of the persons or property of the subjects or citizens of either country, which shall come within the jurisdiction of the other by sea or land.

Of those cited, the ninth article, which provides for the safe keeping and restoration of ships and merchandise rescued from the hands of pirates and robbers, which it declares shall be restored to their true proprietor, after due and sufficient proof shall be made concerning the property thereof, seems the most applicable to the case under consideration.

The undersigned, after a careful consideration of all the arguments offered by M. d'Argaiz, and an examination of the facts which have been made known, is unable to see in what particular this article, or any stipulation contained in it, or any of the others, has been violated or disregarded, or that the course given to this affair has been in any manner contrary to the spirit and intention of any part of the treaty.

Upon the arrival of the schooner "Amistad" near our coast, it was, with

all its cargo, according to the provisions of the ninth article, taken into the custody of the officers of the nearest port.

In consequence of a claim preferred for salvage by those who had saved both vessel and cargo, and rescued the subjects of Spain from death, or perhaps imprisonment enduring for life among the savage inhabitants of Africa, the subject of the ownership of the vessel and cargo was brought before the courts. Before those courts, also, the subjects of Spain submitted their answer to these claims and their complaints—with how much magnanimity refusing compliance with a just demand for services rendered them at such time and such a situation the undersigned will not undertake to say. Besides the common articles of merchandise and traffic, there were found on board a number of negroes, claimed as the lawful property of Spanish subjects, and said to form part of the cargo; and on these also, as part of the cargo, salvage was claimed by those who had saved them for their owners, if they had any, and their pretended owners from them.

The whole subject, then, of the ownership of the vessel, and of all the cargo, came properly and legally before the courts, who proceeded, as was their duty under the treaty, on the presentment of such a case to them, to investigate it carefully, deliberately, and circumspectly.

Thus proceeding, the courts, upon the testimony before them, decided; awarding the vessel to its lawful owner, and the cargo to its respective lawful owners, and a certain amount of salvage to those who had been instrumental in saving both. It was found by the courts, that the negroes were not the lawful property of any one, and no part of the cargo, and consequently subject to no claim for salvage, but that they were freemen, captured and sold and held in bondage, contrary as well to the laws of Spain as of the United States; and the courts, in the just exercise of their power, decided, as they were bound to do, under existing laws and treaties, and upon the facts as they appeared. M. d'Argaiz demands indemnification for the vessel and cargo, including the negroes found on board. Were this Government conscious of having inflicted injury upon any, whether a private individual or a powerful nation, indemnification would be readily granted; but the question of the existence of any such injury must be determined by the Government itself. In this case the undersigned is of opinion that no injury has been done to any one of the subjects of Spain, but, on the contrary, that the Government has gone quite as far in granting them protection, and manifesting a favorable disposition towards them, as the circumstances under which they came within its notice could demand of it.

What injury has been inflicted on the subjects of Spain, owners of the vessel and cargo, by saving both from complete destruction, or from entire loss to them, and returning both to them when their legal claims were ascertained? what injury inflicted on those presenting claims to the negroes as slaves, by refusing to allow those claims, proved to be unfounded, and, by all provisions of the code of either country, illegal and criminal? M. d'Argaiz will recollect, besides, that, in his note of the 26th of November, 1839, he demands these negroes, not as property, but as criminals, or in his own language, "not as slaves, but as assassins." Had they been at any time slaves, they would have become, by their killing and escape from lawful bondage, assassins and pirates, whose delivery to the Government of Spain is not provided for in any stipulation

of the treaty of 1795, and which would have been a matter of comity only, not to be demanded as a right. The one point involves the other, and a refusal to deliver them, certainly, is no violation or neglect of any obligation. But the undersigned does not propose to enter into any argument upon a subject which has already been discussed at length, both before the courts and between the two Governments. M. d'Argaiz demands, also, indemnification for injuries suffered by or inflicted on the subjects of Spain, in the persons of Messrs. Ruiz and Montes. For any such losses or injuries inflicted on these gentlemen by any one within the jurisdiction of the United States, this Government offers reparation and indemnification through its courts, which stand open to hear their complaints, to ascertain and repair their wrongs, and punish the wrong doers.

The undersigned, therefore, is instructed to say, that this Government does not perceive with what justice any such demands as M. d'Argaiz has presented can be made on it, and confidently expects that all will agree in justifying and approving the course which it has adopted in regard to the affair. M. d'Argaiz demands, lastly, "the assurance that the course given to this affair shall never serve as a precedent in any analogous cases which may occur."

While the undersigned hopes that no misfortune of the kind will ever again take place upon our coasts or elsewhere, and that no circumstances may ever again give rise to such occurrences as those which mark the affair of the "Amistad" from the commencement of her voyage, he assures M. d'Argaiz that the Government of the United States will endeavor to discharge itself of all obligations imposed upon it with strict justice, honorably to itself and respectfully towards those nations with whom it maintains amicable relations.

The undersigned avails himself of this occasion to offer to M. d'Argaiz the assurance of his very high regard and distinguished consideration.

DANIEL WEBSTER.

Chevalier D'ARGAIZ, &c.

[Translation of a note received Sept. 28th, 1841, from the Chevalier d'Argaiz, minister plenipotentiary of Spain.]

BORDENTOWN, *September 24, 1841.*

The undersigned, envoy extraordinary and minister plenipotentiary of Her Catholic Majesty, has the honor to acknowledge the receipt of the note which the Secretary of State of the Federal Government of the Union was pleased to address to him, under date of the 1st instant, in answer to the letter from the undersigned of the 29th of May last.

The Secretary of State, before entering upon the discussion of the points to which the last note from the undersigned relates, is pleased to say, that the President had supposed that, after the decision of the Supreme Court of the United States upon this question, there would have been no occasion to renew a correspondence upon it between the two Governments.

The Secretary of State, having, without doubt, carefully read the whole of the correspondence which has passed between the Department of State and the legation of Her Catholic Majesty, upon this subject, since the

arrival of the schooner "Amistad" at the Port of New London, will have therein observed, that [this legation] has ever and constantly protested against the jurisdiction of the courts of the United States; inasmuch as, the case falling under the provisions of the treaty of 1795, it should be decided solely and exclusively by the Executive, and not by any other power. This the Federal Government of the Union could not but admit, and did in fact admit, when the Secretary of State's predecessor said to the undersigned, in his note of the 12th of December, 1839: "In connexion with one of the points in the Chevalier d'Argaiz's last note, the undersigned will assure him, that, whatever be in the end the disposal of the question, it will be in consequence of a decision emanating from no other source than the Government of the United States, and that if the agency of the judicial authority shall have been employed in conducting the investigation of the case [it] is because the judiciary is, by the organic law of the land, a portion, though an independent one, of that Government." Relying upon this, and upon this promise, the undersigned quietly awaited the conclusion of the affair; as did also the Government of Her Catholic Majesty, not doubting that, though the courts of the United States might go so far as to investigate the facts, the final and decisive determination would in any event come from the Executive power, as had been promised. Under these circumstances, the undersigned does not think that the Government of the Union should be surprised at the continuation of a correspondence in which, besides the maintenance of a right considered by the undersigned as indisputable, compliance with a promise is also claimed. If, moreover, the President has not the power to destroy or to change in the slightest degree a decision of the Supreme Court of the United States, Her Catholic Majesty's Government cannot agree [*conformaise*—allow, submit to] that the consequence of this should be, in the present case, the open violation of a treaty, which ought to be respected as the supreme law of the United States.

The Secretary of State says that "the court was guided, in its deliberations, as well by the treaty between the two countries as by the law of nations and of the United States, and it is not for the Executive to question that its decree was in exact conformity with the obligations imposed upon it by that treaty and those laws." The undersigned regrets that there should be between the Secretary of State and himself so great a difference in the manner of regarding this point; for if the court of the Union possess the right of interpreting, considering, and deciding upon treaties contracted between nation and nation, and the Executive power cannot inquire whether their decrees are or are not conformable with justice, it would be as well to declare that, in order to give to treaties the force of treaties, or at least to render them obligatory, they should be concluded with the judicial power, or, in better words, that treaties should be made, for them to be afterwards interpreted as the courts might think proper.

The enlightened Secretary of State will agree with the undersigned that one of the things which principally constitute the independence of a country is the jurisdiction of its courts, or, in other words, that no nation, nor its courts, should assume the faculty of pronouncing judicially upon acts committed within the jurisdiction of another. On this principle, the undersigned cannot conceive how the Secretary of State could for a single

moment have supposed that the undersigned would have agreed to, and have seen with satisfaction, the decision of a court of the United States, pronounced upon acts appertaining to Spanish subjects, committed on board of a Spanish vessel, and in the waters of a Spanish territory, within the purview of a treaty and of the law of nations.

The Secretary of State is also pleased to observe "that the schooner 'Amistad,' upon her arrival on this coast, was, with all her cargo, according to the provisions of the ninth article, taken into the custody of the officers of the nearest port, and that, in consequence of a claim for salvage, the subject of the ownership of the vessel and cargo was brought before the courts." The undersigned will not stop to remark upon the magnanimity of a demand for salvage preferred by officers of a ship of war of the United States. But does the Secretary of State believe that this can justify the intervention of the courts of the United States in this case, contrary to the opinion given by the Attorney General, Mr. Grundy, and after, moreover, the officers themselves had renounced their claim to salvage—as Lieutenant Gedney, the commander of the Washington, himself declared to the undersigned?

The Secretary of State also says, that "it was found by the courts that the negroes were not the lawful property of any one." One violation of necessity brought on another, not less unjust; for the judges of the United States, in order to ascertain whether or not the Africans were the lawful property of Spanish subjects, thought proper to examine the papers found on board of the vessel, which had been given by the authorities of Her Catholic Majesty, in the island of Cuba. This was a recognition of the right of search, which, besides its not being authorized by any nation, has been combated by writers on public law, and most particularly, in the case in question, by the distinguished jurist Mr. Grundy, Attorney General of the Union at the time when the schooner "Amistad" arrived on the Anglo-American coasts. (See his opinion on this case.)

With all these considerations in view, and after having carefully examined the note of the Secretary of State, the undersigned cannot comprehend upon what that gentleman founds his assertion, that the courts of the United States could properly and lawfully take cognizance of this case.

There is, however, one circumstance which the undersigned considers well worthy of remark, as the Secretary of State says that court decided that the vessel and her cargo belonged to their lawful owners. As the vessel and cargo had been publicly sold—by whose orders or how, neither the undersigned nor the owners knew—nothing seems to be more just and equitable than to indemnify promptly, duly, and fully, those whose property had been unjustly taken away, in manifest contradiction to the sense and letter of the ninth article of the treaty of 1795; yet when the undersigned claims the indemnification so justly due, the Secretary of State makes no reply on this point, limiting himself, as may be seen in the twelfth paragraph of his note to the declaration, that "were the Government of the United States conscious of having inflicted injury upon any, whether a private individual or a powerful nation, indemnification would be readily granted." The undersigned conceives that the fact of individuals, subjects of Her Catholic Majesty, having been arbitrarily deprived of their vessel and cargo should be sufficient to produce the conviction that indemnification is due to them.

The Secretary of State asks: "What injury has been inflicted on the sub-

jects of Spain, owners of the vessel and cargo, by saving both from complete destruction or from entire loss to them, and returning both to them when their legal claims were ascertained?" In the first place, the undersigned sees with regret that the Secretary of State is under an erroneous impression, for Her Catholic Majesty's subjects have not received, to this day, either the vessel or her cargo; and how could they have been delivered to them, since they were sold during the absence of those subjects, and without their knowledge? The undersigned will, on his side, ask, in what point have the stipulations of the eighth article of the treaty of 1795 been fulfilled towards Her Catholic Majesty's subjects, Don José Ruiz and Don Pedro Montes? Have they been *treated with humanity*? Have *all favor, protection, and help* been extended to them? Have they been *permitted to remove and depart, when and whither they pleased, without let or hinderance*? The unjust imprisonment which they suffered for several months will serve as an answer to these questions.

The undersigned cannot in any way admit the supposition advanced by the Secretary of State, that, "even had the negroes been at any time slaves, they would not have become, by their killing and escape from lawful bondage, assassins and pirates, whose delivery to the Government of Spain, not having been provided for in any stipulations of the treaty of 1795, would have been a matter of comity only, not to be demanded as a right." The treaty of 1795, unquestionably, does not provide for the delivery of pirates or assassins, but only because the contracting parties could never have imagined that a case like the present could have occasioned doubts of any kind, and because the point was so clear that they did not think it necessary to take it into consideration. Who can foresee the horrible consequences which may result, as well in the islands of Cuba and Porto Rico as in the Southern States of the Union, should the slaves come to learn—and there will be no want of persons to inform them—that, on murdering, killing, and flying from lawful captivity, whensoever they may be in transportation from one point of the islands to another, and coming to the United States, the delivery of them, on account of their having murdered, killed, or fled, cannot be demanded as a right? The undersigned leaves to the characteristic penetration of the Secretary of State [the task of imagining] the severe incalculable evils which may be occasioned by realizing this supposition.

The undersigned duly acknowledges the favor of the offer made by the Secretary of State, to the Spanish subjects Ruiz and Montes, that the courts of the United States would be open for them to present their complaints on account of injuries or personal sufferings. To these courts natives as well as foreigners can indifferently have recourse; but Messrs. Montes and Ruiz are in a particular position, in which they are placed as well by the treaty of 1795 as by the law of nations, and, in order to preserve it, they magnanimously suffered a severe imprisonment for months. As they have in consequence placed themselves under the protection of Her Catholic Majesty's legation, they will through it, as the undersigned hopes, obtain a happy result from their complaints.

In consideration of all that has been here set forth, the undersigned takes pleasure in believing that the Secretary of State will find his demands just and well founded, and will, he doubts not, take proper measures for arriving at the happy consummation which he promises to himself. The undersigned, at the same time, thinks it his duty to state that

he has received express orders from his Government to protest, in the most solemn and formal manner, against all that has been done, by the courts of the United States, in the case of the schooner *Amistad*—the fulfilment of this order being one of the principal objects which the undersigned proposed to accomplish by this note.

The undersigned cannot conclude this communication without conveying to the Secretary of State his acknowledgments for the expression of his desire to preserve unbroken the old and friendly relations which, fortunately and for their mutual prosperity, bind Spain to the United States. The undersigned and his Government cherish the same desires; and, with this understanding, he flatters himself that he will shortly receive a proof of the scrupulous exactness with which the Government of the Union fulfils the treaties and stipulations which unite it with other friendly nations.

The undersigned avails himself of this opportunity to repeat to the Secretary of State the assurances of his high esteem and distinguished consideration.

P. A. D'ARGAIZ.

HON. DANIEL WEBSTER,
Secretary of State of the United States.

DEPARTMENT OF STATE,
Washington, June 21, 1842.

The Secretary of State has to acknowledge the receipt of the note of 24th September, which M. d'Argaiz did him the honor to address to him.

Viewing that note as intended mainly for a protest against the proceedings of this Government in the case of the "*Amistad*," the undersigned did not think a reply was desired, or that any advantage would ensue from further prolonging the discussion.

Understanding now from conversation with M. d'Argaiz that a reply is expected, the undersigned proceeds to offer some remarks on the subject of M. d'Argaiz's note.

The undersigned did certainly suppose that the communication to M. d'Argaiz of the decision of the Supreme Court would close the correspondence on that subject. The immediate predecessor of the undersigned, whose remarks, as quoted by M. d'Argaiz, the undersigned well remembers, meant, and could have meant, nothing more, by those remarks, than that the decision of the Supreme Court would be the decision of the Government. Mr. Forsyth does not use the word Executive in this connexion. He says, "Government." "Whatever be in the end, the disposal of the question, it will be in consequence of a decision emanating from no other source than the Government of the United States."

The Supreme Court is a part of that Government, as Mr. Forsyth remarks; and its decision, in matters lawfully within its jurisdiction, is the final decision of the Government of the United States upon such matters.

M. d'Argaiz seems to think that a treaty stipulation cannot be subjected to the interpretation of the judicial authority, and proceeds to remark, that, if the courts of the Union possess the right of interpreting, considering, and deciding upon treaties contracted between nation and nation, and the Executive power cannot inquire whether their decrees are or are not conformable with justice, it would be as well to declare

that, in order to give to treaties the force of treaties, or at least to render them obligatory, they should be concluded with the judicial power, or, in better words, that treaties should be made, for them to be afterwards interpreted as the courts might think proper." But the undersigned supposes that nothing is more common, in countries where the judiciary is an independent branch of the Government, than for questions arising under treaties to be submitted to its decision. Indeed, in all regular Governments questions of private right, arising under treaty stipulations, are in their nature judicial questions. With us, a treaty is part of the supreme law of the land; as such it influences and controls the decisions of all tribunals; and many instances might be quoted of decisions made in the Supreme Court of the United States, arising under their several treaties with Spain herself, as well as under treaties between the United States and other nations. Similar instances of judicial decisions on points arising under treaties may be found in the history of France, England, and other nations; and, indeed, the undersigned would take the liberty to remind the Chevalier d'Argaiz that this very treaty of 1795 has been made the subject of judicial decision by a Spanish tribunal.

The undersigned would call to the recollection of the Chevalier d'Argaiz, the case of Mr. D. Hareng, in which the Spanish colonial courts decided according to their sense of the intention of the treaty of 1795, and the Intendant confirmed their decree, which was, that nothing in that treaty exempted Mr. Hareng from the payment of certain demands. From this decision this Government was inclined to dissent, but never questioned the right and duty of a Spanish court to consider the intent and effect of a treaty.

M. d'Argaiz states: "The enlightened Secretary of State will agree with the undersigned that one of the things which principally constitute the independence of a country is the jurisdiction of its courts, or, in other words, that no nation, nor its courts, should assume the faculty of pronouncing judicially upon acts committed within the jurisdiction of another. On this principle, the undersigned cannot conceive how the Secretary of State could for a single moment have supposed that the undersigned would have agreed to, and have seen with satisfaction, the decision of a court of the United States, pronounced upon acts appertaining to Spanish subjects, committed on board of a Spanish vessel, and in the waters of a Spanish territory, within the purview of a treaty and of the law of nations.

"The Secretary of State is also pleased to observe, 'that the schooner 'Amistad,' upon her arrival on this coast, was, with all her cargo, according to the provisions of the ninth article, taken into the custody of the officers of the nearest port, and that, in consequence of a claim for salvage, the subject of the ownership of the vessel and cargo was brought before the courts.' The undersigned will not stop to remark upon the magnanimity of a demand for salvage preferred by officers of a ship of war of the United States. But does the Secretary of State believe that this can justify the intervention of the courts of the United States in this case, contrary to the opinion given by the Attorney General, Mr. Grundy, and after, moreover, the officers themselves had renounced their claim to salvage—as Lieutenant Gedney, the commander of the Washington, himself declared to the undersigned? The Secretary of State also says, 'that it was found by the courts that the negroes were not the lawful property of any one.' One violation of necessity brought on another, not

less unjust; for the judges of the United States, in order to ascertain whether or not the Africans were the lawful property of Spanish subjects, thought proper to examine the papers found on board of the vessel, which had been given by the authorities of Her Catholic Majesty, in the island of Cuba. This was a recognition of the right of search, which, besides its not being authorized by any nation, has been combated by writers on public law, and most particularly, in the case in question, by the distinguished jurist Mr. Grundy, Attorney General of the Union, at the time when the schooner 'Amistad' arrived on the Anglo-American coasts. (See his opinion on the case.)"

The undersigned will make one more attempt to state the general occurrences of this transaction so plainly that he cannot be misunderstood, with a hope of convincing M. d'Argaiz that nothing has been done by the authorities of the United States, or any of them, not in strict accordance with the principles of public law and the practice of nations; nothing which can be complained of with justice as an encroachment upon Spanish territories, or visiting and searching Spanish vessels. The succinct history of the case is the most complete justification which can be made of all that has been done in regard to it in the United States.

Lieutenant Gedney, of the United States brig Washington, on the 27th of June, 1839, discovered the Spanish schooner "Amistad," then at anchor within half a mile of the shore of the United States. The vessel was then in possession of certain blacks, who had risen upon and killed the captain. Lieutenant Gedney took possession of and brought in the vessel to the United States, and for this service claimed salvage upon the common principles of maritime law. The possession of the vessel had become already lost to her owners; and to save her from entire destruction and to restore her to those owners was esteemed a meritorious service. The Chevalier d'Argaiz must certainly understand that when merchant vessels are met with at sea, so shattered by storms and tempests, or other disasters, or so deprived of their crew, as to be unable to prosecute their voyages, in all such cases other vessels falling in with them and saving them are entitled to reasonable compensation; and, to ascertain the amount of this compensation, the vessel is to be brought in, subjected to judicial proceedings, and justice rendered the claimants and salvors, according to well established rules and principles.

Spain, herself, in the early ages of commerce, was among the first to establish the principles and lead in the administration of this part of the maritime law, and these principles now prevail over the whole commercial world; and the highest judicial authority in the United States, acting under the influence of the same rules which must have controlled the decisions of an English tribunal, a French tribunal, or a Spanish tribunal, has decided that the case was a case for salvage, and has decreed to the salvors a just compensation. The undersigned is therefore quite at a loss to conceive how this transaction can be deemed an encroachment upon the jurisdiction of Spain, or an unlawful visitation and search of Spanish vessels. At the institution of proceedings in the court, claims were interposed on behalf of Spanish subjects for the vessel and cargo, which were allowed, subject to salvage.

Claims were also interposed for the negroes found on board, which were claimed as slaves, and the property of Spanish subjects. On the other hand, the negroes denied that they were slaves, and the property of

Spanish subjects or any other persons. It was impossible for the courts to avoid the decisions of the questions thus brought before them; and, in deciding them, it was bound to regard the law of nations, the laws of Spain, the treaty between Spain and the United States, the laws of the United States, and the evidence produced in the case.

Proceeding upon these grounds, after a very patient investigation, and the hearing of elaborate arguments, the court decided that the negroes found on board the *Amistad*, with one exception, were not slaves, nor the property of any body, but were free persons, and therefore decreed that they should be set at liberty. All this appears to the undersigned to be in the common course of such affairs. The questions in which Spanish subjects were interested have been heard and tried before competent tribunals, and one of them has been decided against the Spanish subjects; but this can give no possible ground of complaint on the part of Spain, unless Spain can show that the tribunal has acted corruptly, or has decided wrong in a case in no degree doubtful. Nations are bound to maintain respectable tribunals, to which the subjects of States at peace may have recourse for the redress of injuries and the maintenance of their rights. If the character of these tribunals be respectable, impartial, and independent, their decisions are to be regarded as conclusive.

The United States have carried the principle of acquiescence, in such cases, as far as any nation upon earth, and, in respect to the decisions of Spanish tribunals, quite as frequently perhaps as in respect to the tribunals of any other nation.

In almost innumerable cases of reclamations sought by citizens of the United States against Spain for alleged captures, seizures, and other wrongs committed by Spanish subjects, the answer has been that the question has been fairly tried before an impartial Spanish tribunal, having competent jurisdiction, and decided against the claimant; and in the sufficiency of this answer the Government of the United States has acquiesced.

If the tribunal be competent, if it be free from unjust influence, if it be impartial and independent, and if it has heard the case fully and fairly, its judgment is to stand as decisive of the matter before it. This principle governs in regard to the decisions of courts of common law, courts of equity, and especially courts of admiralty, where proceedings so often affect the rights and interests of citizens of foreign States and Governments.

M. d'Argaiz complains that the vessel and cargo were sold, and that loss thereby happened to the owners. But all this was inevitable, and no blame attaches on account of it to the tribunal. In cases of an allowance for salvage, if the owner be not present and ready to pay the amount, the property must necessarily be sold, that the proceeds be properly apportioned between owner and salvor. This is a daily occurrence in every court of admiralty in the world. Sufficient notice of the intended sale was given in legal form, in order that the claimants might be present, or might, if they pleased, prevent it, by paying the amount awarded for salvage, and receive their property.

The Chevalier d'Argaiz complains that Messrs. Montes and Ruiz suffered an unjust imprisonment in the United States. The undersigned cannot but think that such an allegation of injury, put forth in behalf of Messrs. Montes and Ruiz, is not a little extraordinary. These persons themselves had held in unjust and cruel confinement certain negroes

who, it appeared on trial, were as free as themselves, and these negroes, finding themselves within the protection of equal laws, sought redress, by a regular appeal to those laws, for the injuries which they had suffered. The pursuit of this redress by the injured parties, it appears, subjected Messrs. Ruiz and Montes to a temporary imprisonment. In the judgment of enlightened men, they will probably be thought to have been very fortunate in escaping severer consequences. M. d'Argaiz's note contains a paragraph of the following tenor :

"The undersigned cannot in any way admit the supposition advanced by the Secretary of State, that, 'even had the negroes been at any time slaves, they would not have become, by their killing and escape from lawful bondage, assassins and pirates, whose delivery to the Government of Spain, not having been provided for in any stipulations of the treaty of 1795, would have been a matter of comity only, not to be demanded as a right.' The treaty of 1795, unquestionably, does not provide for the delivery of pirates or assassins, but only because the contracting parties could never have imagined that a case like the present could have occasioned doubts of any kind, and because the report was so clear that they did not think it necessary to take it into consideration. Who can foresee the horrible consequences which may result, as well in the islands of Cuba and Porto Rico as in the Southern States of the Union, should the slaves come to learn—and there will be no want of persons to inform them—that, on murdering, killing, and flying from lawful captivity, whensoever they may be in transportation from one point of the islands to another, and coming to the United States, the delivery of them, on account of their having murdered, killed, or fled, cannot be demanded as a right? The undersigned leaves to the characteristic penetration of the Secretary of State [the task of imagining] the severe incalculable evils which may be occasioned by realizing this supposition."

The undersigned must beg leave to differ entirely from M. d'Argaiz in regard to the rule of law for delivering up criminals and fugitives from justice. Although such extradition is sometimes made, yet, in the absence of treaty stipulations, it is always matter of comity or courtesy. No Government is understood to be bound by the positive law of nations to deliver up criminals, fugitives from justice, who have sought an asylum within its limits. The Government of the United States has had occasion to hold intercourse on this question with England, France, Russia, Denmark, and Sweden; and it understands it to be the sentiment of all these Governments, as well as the judgment of standard writers on public law, that, in the absence of provisions by treaty, the extradition of fugitive offenders is a matter resting in the option and discretion of every Government.

The undersigned has thus once more gone over the circumstances of this case, and stated the view which the Government of the United States has of it. He sincerely and confidently hopes that the Chevalier d'Argaiz will perceive that this Government has violated none of its obligations to Spain, or done injustice, in any manner whatever, to any Spanish subject.

The undersigned avails himself of this occasion to renew to the Chevalier d'Argaiz assurances of his high consideration.

DANIEL WEBSTER.

Chevalier d'ARGAIZ, &c,

